

IN RE: PETITION FOR SPECIAL HEARING
5/5 Seminary Avenue, 324' W
of York Road
(16 W. Seminary Avenue)
9th Election District
4th Councilmanic District
Roland A. Rockel
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 83-489-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special hearing for a determination as to whether or not the Chesapeake and Potomac Telephone Company of Maryland is permitted to construct and use a public utility service center structure, specifically, a service area interface box, on a portion of the subject property owned by the Exxon Corporation, zoned D.R. 5.5, without a public hearing and/or the granting of a special exception, in lieu of the requirements of Section 411 of the Baltimore County Zoning Regulations (B.C.Z.R.), and additionally, the Petitioner seeks a determination as to whether or not a service area interface box for telephone equipment requires a special exception for use as a "Public - utility service center" as set forth in Section 1801.1.C.13 of the B.C.Z.R.

The Petitioner appeared and testified. Also appearing on behalf of the Petitioner was Lewis E. London. William Simms, a representative for the C & P Telephone Company, the Protestant in this matter, appeared, testified and was represented by Counsel, Keith Truffer, Esquire. Anthony J. DiPaula, Esquire appeared to represent the interest of the Exxon Corporation, legal owners of the subject property.

Testimony indicated that the subject property is located at the corner of Seminary Avenue and York Road in Lutherville. The site is improved with an existing Exxon Service Station. The subject property also

has an undeveloped portion to the rear on which a C & P Telephone Company service area interface box is located. The majority of the subject property is zoned B.L.-C.N.S. and a smaller portion is zoned D.R. 5.5. The service station is located in the B.L.-C.N.S. portion of the property. The telephone interface box is located on the northwestern corner of the property and consists of an area of approximately 10' x 10'.

The telephone utility box, as depicted in Protestant's Exhibit 3, is known as a service area interface box. These boxes are used to connect individual households and businesses to the major trunk lines which carry signals to the larger distributing locations. These larger units are known as Controlled Environment Vaults (CEV), which in turn coordinate and direct telephone service and connections to main telephone switching headquarters.

A service area interface box is capable of connecting as many as 200 to 600 customers to the telephone system. The technology involved was developed in the early 1970s and is considered the most modern facility for connecting customers to the telephone system. There are currently approximately 400 of these service area boxes in the western half of Baltimore County. These boxes serve as the primary link between the individual telephone customer and the system. They provide an access point at which the telephone company can connect individuals to the system. They are generally no larger than 4' high, 5' wide, and 2' deep. Most boxes are smaller.

The Petitioner believes the telephone company is required to obtain a special exception, pursuant to Section 1801.1.C.13. of the B.C.Z.R., for each of these utility boxes. In his opinion, these interface boxes are public utility service centers as defined in the B.C.Z.R.

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He argues that any equipment that a telephone technician uses to service or interact with other telephone equipment is, by definition, a service center, and as such, requires a special exception to be located on D.R. zoned land. Additionally, the Petitioner argues that the statement of policy and opinion that was set forth in the letter dated February 29, 1988 from Mr. James E. Dyer, Zoning Supervisor, to the Petitioner, identified herein as Protestant's Exhibit 1, is contradictory to public policy and is a violation of his constitutional due process rights.

Mr. Rockel believes that the telephone company should obtain a special exception in every case where equipment is installed upon residentially zoned property. He also believes that the policy decision set forth in Protestant's Exhibit 1 is improper because the telephone company possesses the right to condemn land and should not be allowed to place its equipment upon privately owned, residentially zoned property, when it could condemn the property to convert same to public land, thereby requiring a public hearing on the condemnation proceedings. This, he believes, would serve the public good and should be the law.

The Petitioner also argues that if a special exception is not required for the installation of service area interface boxes, then the telephone company can just as easily construct a truck center or service building upon property without obtaining a special exception. In addition, he stated that to permit this type of facility on D.R. zoned land is an erosion of the zoning regulations that will lead to commercialization of D.R. zoned land and will be followed by additional commercial uses, such as stores and businesses. He stated he is extremely opposed to the granting of private easements by landowners for the construction of such service area interface boxes. He believes that all such boxes should be

-3-

placed upon public land, or upon land owned by the telephone company itself.

The Petitioner stated that every location with equipment belonging to a public utility that allows service of the equipment is a "public-utility service center" requiring a special exception. The Petitioner claims that Section 411 of the B.C.Z.R. supports his position. He states that both Section 1801.1.C.13 and the definitions found in Section 101 all require a Special Exception for these service area interface boxes.

I do not agree. The Petitioner's arguments are based upon a misinterpretation of both the literal meaning of the regulations and the spirit and intent of the regulations. The B.C.Z.R. contain many different kinds of regulations. To name a few, there are area, bulk and use regulations. There are also special regulations and administrative requirements. When a question of interpretation of the regulations arises, the first issue is always a determination as to what type or purpose the particular Section serves.

Section 411 is not a use regulation. This Section states "For public utility uses permitted only by Special Exceptions in addition to the provisions of Section 502, the following regulations shall apply." Clearly, this language does not speak of zones or uses therein. This Section applies to the review of cases where a special exception is required. It does not control which cases require a special exception, but establishes certain requirements when a special exception is needed.

A review of Section 101, the definition section of the B.C.Z.R., offers no support for the Petitioner's argument. There is no language to be found in any subsection that deals with the use of land. The defini-

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exception for use as a "Public - utility service center" as set forth in Section 1801.1.C.13 of the B.C.Z.R.

JRH:bjs

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

Zoning Case No. 83-234-XSPHA correctly applied the principals of the zoning regulations. In the instant case the service area interface box is a small or minor piece of public utility equipment and not a service center as envisioned in the special exception requirements of Section 1801.1.C.13.

Equipment such as the service area interface box in question was not even in existence in 1956. Such equipment is clearly minor and close to the customer end of the telephone line. This equipment is clearly not named in the zoning regulations but serves the similar purpose as some of that old named permitted equipment.

The purpose and intent of the regulations to allow certain minor or common equipment as a matter of right is clear. The service area interface box is such minor or common equipment and shall be interpreted to be permitted as a matter of right pursuant to Section 1801.A.4 and .5 of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special hearing is as follows.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 15th day of August, 1988 that the Chesapeake and Potomac Telephone Company of Maryland is permitted to construct and use a service area interface box on property owned by the Exxon Corporation, zoned D.R. 5.5, without a public hearing and/or the granting of a special exception, in lieu of the requirements of Section 411 of the Baltimore County Zoning Regulations (B.C.Z.R.), and additionally, that a service area interface box for telephone equipment does not require a special

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spirit and intent is clear that the poles are also permitted as a matter of right.

Finally, the regulations provide one more form of assistance to the interpretation of this issue. Section 306 addresses area requirements for minor public utility structures. This Section reads "Minimum lot area regulations in any zone shall not apply to repeater, booster, or transformer stations, or small community dial offices." The intent of this language is to allow minor public utility structures. All of these structures are larger than service area interface boxes.

Policy A24 of the Zoning Policy Manual states that, "Controlled environment vaults for underground digital electronic communication terminals on private property are considered minor public utility uses under Section 306 and an underground conduit, that the above-ground equipment is accessory to; therefore they are permitted in all zones as of right and are exempt from the area requirements in the zoning regulations and C.M.D.P. provided:

- The aboveground equipment does not exceed 7' x 6' x 3' in height; and
- Sufficient setbacks to allow landscaping and a landscaping plan approved by the Current Planning and Development Division of Planning and Zoning shall be provided for each individual site."

In Case No. 83-234-XSPHA, the Deputy Zoning Commissioner ruled that the larger CEVs are permitted as a matter of right in all zones and not subject to the requirements of a special exception. This case followed the established policy to recognize the spirit and intent of Section 306 of the B.C.Z.R. and permit minor switching equipment as a minor public utility structure, even when the new equipment is not specifically listed in the 1955 code language.

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tions do not control or establish useage, they only add meaning to words and terms.

The remainder of the Petitioner's arguments are based upon his review of Section 1801.1.C.13. He argues that a point in the telephone system that allows service or connection to the system is a service center requiring a Special Exception. This argument is an unrealistic and narrow interpretation of the spirit and intent of the B.C.Z.R.

Sections 1801.A.4 and .5 permit many public utility uses and equipment as a matter of right. The fact that service or maintenance of such public utility equipment is a necessity is undisputed. The evidence of such service can be seen at any time throughout Baltimore County. Service on poles, lines and equipment has always taken place. Clearly, the Baltimore County Council had knowledge of these common facts when they adopted the regulations in 1955 and this equipment was permitted as a matter of right. The Petitioner's argument that a special exception is required for every piece of equipment that may permit service or maintenance by the telephone company is not consistent with a clear reading of the regulations.

Equally clear, the Baltimore County Council recognized the difference between major public utility uses (Section 1801.1.C.13 and 14) and minor public utility uses (Section 1801.1.A.4 and .5 and Section 306) when the regulations were written. A good example of these open uses can be found in the fact that telephone lines are permitted as a matter of right, but the poles that hold the lines are not specifically named. Therefore, would the Petitioner argue that a telephone pole which is used to gain access to the line for service requires a special exception? No, the

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines, Zoning Commissioner Date: May 16, 1988
FROM: P. David Fields, Director, Office of Planning and Zoning
SUBJECT: Zoning Petitions #88-477-SPH, 88-478-SPH, 88-489-SPH, 88-494-A, 88-497-SPH

In view of the subject of these petitions, this office offers no comment.

P. David Fields
P. David Fields, Director
Office of Planning and Zoning

PDF/jat

cc: Shirley Hess, People's Counsel
J. G. Howell
Zoning Office

cc: Mr. Roland A. Rockel

88-489-SPH

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

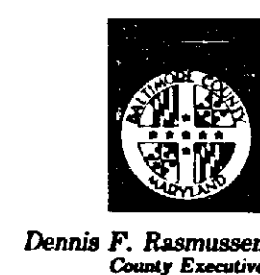
Your petition has been received and accepted for filing this
30th day of March, 1988.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Petitioner: Roland A. Rockel
Received by: James P. Dyer, Chairman, Zoning Plans Advisory Committee
Petitioner's Attorney

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
494-3534

May 6, 1988



Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, and 347.

Very truly yours,

Stephen E. Weber
Stephen E. Weber, P.E.
Assistant Traffic Engineer

SEW/RF/pml-b

RECEIVED ZONING OFFICE
DATE: 5/16/88

RE: PETITION FOR SPECIAL HEARING
S/S Seminary Ave., 324' W York Rd., 9th Election District
ROLAND A. ROCKEL, Petitioner
* BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
* Case No. 88-489-SPH

ENTRY OF APPEARANCE

Please enter the appearance of Keith R. Truffer in this matter as counsel for The Chesapeake & Potomac Telephone Company of Maryland.

Keith R. Truffer
Keith R. Truffer
Royston, Mueller, McLean & Reid
102 W. Pennsylvania Avenue
Towson, Maryland 21204
(301) 823-1800

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 13th day of May, 1988, a copy of the foregoing Entry of Appearance was mailed, by first class, postage prepaid, to Phyllis Cole Friedman, People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204; to Mr. Roland A. Rockel, 16 W. Seminary Avenue, Lutherville, Maryland 21093; and to Exxon Co., Inc., U.S.A., 11350 McCormick Road, Hunt Valley, Maryland 21031.

Keith R. Truffer
Keith R. Truffer

ROYSTON, MUELLER, MCLEAN & REID
SUITE 400
102 W. PENN. AVE.
TOWSON, MARYLAND
21204-4575
823-1800

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 27, 1988

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204
000

Mr. Roland A. Rockel
16 West Seminary Avenue
Lutherville, Maryland 21093

RE: Item No. 345 - Case No. 88-489-SPH
Petitioner: Roland A. Rockel
Legal Owner: Exxon Corporation
a/k/a/ Esso Standard Oil Company
Grantee of Easement: C & P Telephone Co. of Maryland
Petition for Special Hearing

Dear Mr. Rockel:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:dt

Enclosures

Baltimore County
Fire Department
Towson, Maryland 21204-2586
494-4500

Paul H. Reincke
Chief
J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

April 5, 1988

Re: Property Owner: Lessee: C & P Telephone Co. of Md./Petitioner: Dennis F. Rasmussen
Roland A. Rockel
Location: S/S Seminary Avenue, 324' W. York Road
Item No.: 345 Zoning Agenda: Meeting of 3/29/88

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals or feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- () 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
- () 6. Site plans are approved, as drawn.
- (X) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *John F. O'Neill* Noted and Approved: *John F. O'Neill*
Planning Group Fire Prevention Bureau
Special Inspection Division

/s/



Maryland Department of Transportation
State Highway Administration

Richard H. Trainor
Secretary
Hal Kassoff
Administrator

March 31, 1988

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204
Att: James Dyer

RE: Baltimore County
C & P Telephone Company
Zoning Meeting 3/29/88
S/S Seminary Avenue
Maryland Route 131
324' west of York Road
Item #345

Dear Mr. Haines:

After reviewing the submittal for the special exception to permit the construction and use of a public utility service center structure on privately owned land, the State Highway Administration-Bureau of Engineering Access Permits finds the plan acceptable with no direct access to Seminary Avenue.

If you have any questions, contact Larry Brocato of this office (333-1350).

Very truly yours,

Creston J. Mills Jr.
Creston J. Mills Jr.
Acting Chief-Bureau of
Engineering Access Permits

LB/es

cc: J. Ogel
Kilde Consultants Inc.

RECEIVED
APR 5 1988
ZONING OFFICE

My telephone number is (301) 333-1350

Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 585-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

ROYSTON, MUELLER, MCLEAN & REID
ATTORNEYS AT LAW

R. TAYLOR MCLEAN
RICHARD A. REID
E. HARRISON STONE
MILTON R. SMITH, JR.
C. S. KUNZELMEIER III
THOMAS F. MCDONOUGH
LAWRENCE F. HANUP
LAUREL P. EVANS
KEITH R. TRUFFER
ROBERT S. HANCOCK
EDWARD J. GILLIS
C. LARRY HORNEMASTER, JR.
ELIZABETH P. S. STELLMANN

SUITE 400
102 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4575
(301) 823-1800
TELECOPIER FAX (301) 828-7858

OF COUNSEL
CARROLL W. ROYSTON
H. ANTHONY MUELLER
JOHN L. ASKEW

May 16, 1988

HAND DELIVERY

Mr. J. Robert Haines
Zoning Commissioner
Baltimore County Office of
Planning & Zoning
Towson, Maryland 21204

Re: S/S Seminary Avenue, 324' W. York Road
Case No. 88-489-SPH

Dear Mr. Haines:

I enter my appearance in this case on behalf of The C&P Telephone Company of Maryland. Please file the enclosed Entry of Appearance in this matter.

Sincerely yours,

Keith R. Truffer
Keith R. Truffer

KRT/cjc
1849y
Enclosure

cc: Mr. Roland A. Rockel
Phyllis Cole Friedman
Exxon Co., Inc., U.S.A.

RECEIVED
MAY 11 1988
ZONING OFFICE

PETITIONER(S) SIGN-IN SHEET

NAME ADDRESS
James E. Towson 1740 Seminary Ave
Lutherville Md. 21093

PLEASE PRINT CLEARLY PROTESTANT(S) SIGN-IN SHEET

NAME ADDRESS
LEITH TEUFEL 102 W. PENNSYLVANIA AVE
TOWSON MD. 21204
WILLIAM J. SIMMS 305 W. CHESAPEAKE AVE. RM 410 TOWSON
ANTHONY J. DIPIANA, JR. 614 ROSLEY AVE - TOWSON MD 21204

PETITIONER'S EXHIBIT 5

CAP Telephone

THIS DEED, made this 28th day of August 1983 by and between, Exxon Corporation, the undersigned, hereinafter called Grantor, and THE CHESAPEAKE & POTOMAC TELEPHONE COMPANY of MARYLAND, a body corporate, hereinafter called Grantee.

WITNESSETH, that in consideration of the sum of \$ 1.00 and other valuable consideration, the receipt whereof is hereby acknowledged, the Grantor does grant and convey unto the Grantee, its associates and allied companies, and their respective successors, assigns and licensees, a Right-of-Way Easement to construct, operate, maintain, modify, replace and remove telecommunication and electric systems, including the necessary poles, braces, anchors and guys, conduit, manholes, cables, wires and distances upon, under, over and through the property of the undersigned located in the 9th Election District of Baltimore County, MD., said easement area, being more specifically described as follows:

In accordance with easement description entitled Schedule "A" and right of way easement plat attached hereto, the undersigned, Grantor, does grant and convey unto the Grantee, its associates and allied companies, and their respective successors, assigns and licensees, a Right-of-Way Easement to construct, operate, maintain, modify, replace and remove telecommunication and electric systems, including the necessary poles, braces, anchors and guys, conduit, manholes, cables, wires and distances upon, under, over and through the property of the undersigned located in the 9th Election District of Baltimore County, MD., said easement area, being more specifically described as follows:

Being part of a parcel of ground which by Deed dated March 1, 1955, and recorded among the Land Records of Baltimore County, MD. in Liber 2655, Folio 110, was granted and conveyed by William T. Riemann and wife to Esso Standard Oil Company.

Together with the right of ingress and egress to said systems at all times, and the right to trim, top, or cut trees adjacent to said lines and sufficiently for the safe and proper operation and maintenance thereof. And together with the right to maintain said parcel of land at all times in such manner as in Grantee's determination appears necessary.

The Grantee agrees to repair or pay for all damage to crops, lawns, fields, fences, driveways and walkways arising from the construction and maintenance of the aforesaid systems, except where such damage is not attributable to the actions of the Grantee, its employees or agents, or its successors or assigns or the employees or agents thereof. The Grantee acknowledges and agrees that the terms and conditions set forth in Rider "A" attached hereto are incorporated into this deed and Grantee for themselves and their respective successors, assigns, and licensees, mutually agree that the granting of this easement does not convey any interest in or to any mineral rights.

IN WITNESS WHEREOF, the undersigned herunto set their hand and seal.

WITNESS: James E. Towson James E. Towson James E. Towson

STATE OF MARYLAND) TO WIT: James E. Towson James E. Towson James E. Towson
COUNTY OF BALTIMORE)

I HEREBY CERTIFY that on this 28th day of August 1983, before me, the subscriber, a Notary Public in and for the State of Maryland, personally appeared James E. Towson and James E. Towson and acknowledged the above instrument to be their act and deed.

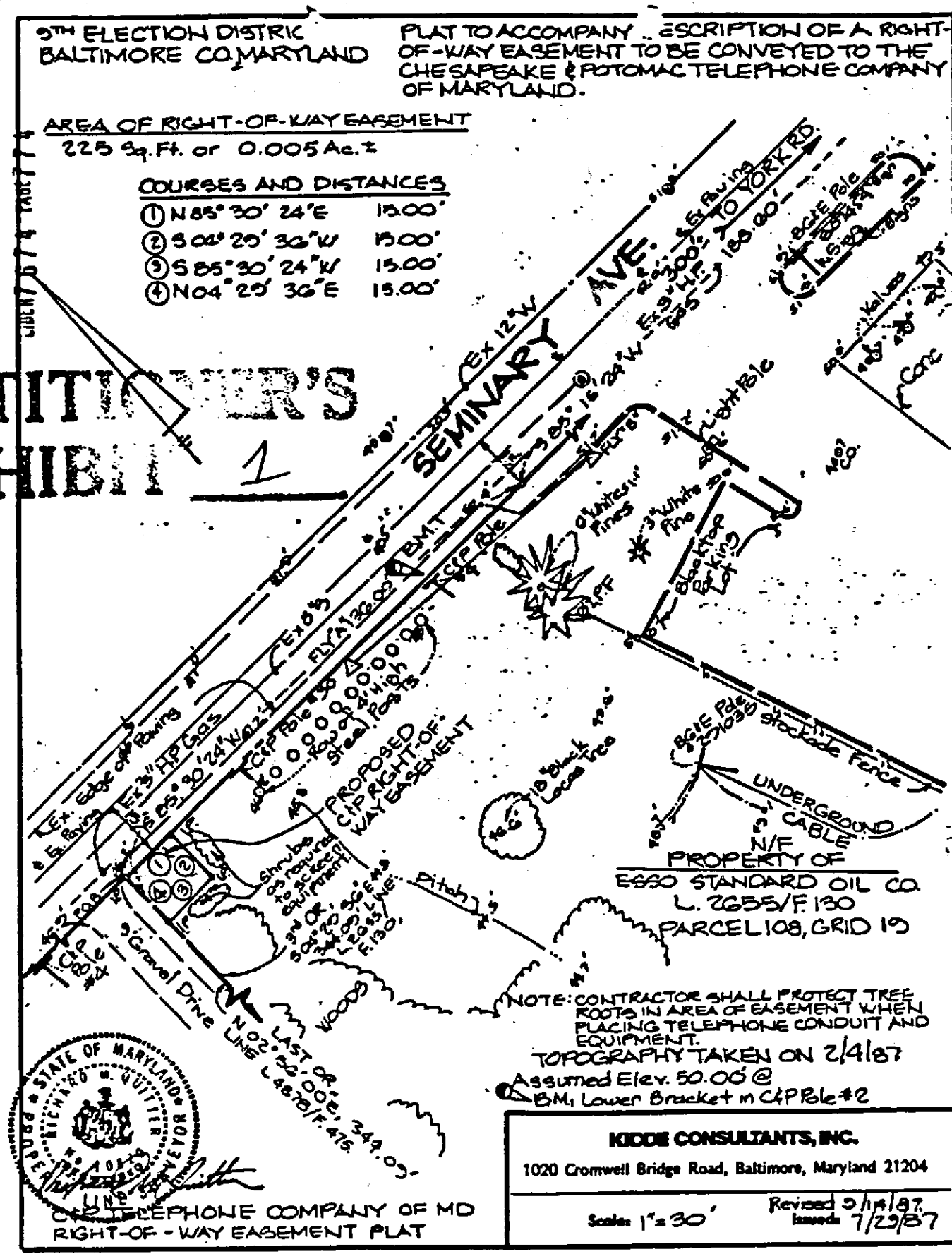
WITNESS my hand and Notary Seal this 28th day of August 1983.

NOTARY PUBLIC

My Commission Expires 12-31-87 Central Office Name
Right-of-Way Easement No. _____ Location Code No. _____
Work Order No. _____

STATE DEPARTMENT OF ASSESSMENTS & TAXATION
9-2-87 DATE
9-2-87 DATE

PETITIONER'S EXHIBIT 1



PETITIONER'S EXHIBIT 6

Residence: 1-854-6811
Business: 1-854-2222
Pay Phone: 1-854-6060

No charge to call the numbers on this page.

CAP will repair:

• THE OUTSIDE LINE from your home or business to our office.
• THE INSIDE WIRING - Residential customers: If you have our Inside Wire Maintenance Plan or Guardian Plan, we will repair the inside wiring and/or jack at no extra charge. If not, we can repair it for a fee. (See page 10 for details on Inside Wire Maintenance Plan and Guardian Plan.)

CAP DOES NOT repair phone sets or other phone equipment. You are responsible for repair of your phones. (If you have Guardian Plan, CAP will arrange for use of a loaned phone set, up to 60 days, while your set is being repaired.)

BEFORE YOU CALL any repair service, FIRST check to see if the problem is in the phone set, the inside wiring, or the outside line. With Guardian Plan, CAP will locate the problem for you.
Check all your phones. Do you have the same problem on all phones? For example, you have no dial tone or can't hear on all phones. The problem is probably in the outside line or inside wiring.
If one of your phones doesn't work, unplug it and plug a working phone into its jack. If that phone works, the problem is in the non-working phone set.

If you only have one phone, try to borrow one from a neighbor and plug it into your phone jack. If you have the same problem with the borrowed phone, the problem is probably in the outside line or inside wiring.
If you can't unplug your phone, or if you are still not sure where the problem is, call CAP Repair.

TYPES OF REPAIR PROBLEMS - WHERE TO CALL

| | | |
|--|--|---|
| | Typical Outside Line Problems • No dial tone on all phones • Can't call in or out on all phones • Can't hear or be heard on all phones • Cut out off when talking on all phones • Noise or static on all phones | CAP Repair - (24 hours a day) Residence 1-854-6811 Business 1-854-2222 Pay Phone 1-854-6060 |
| | Typical Inside Wiring Problem • A phone that works in one jack but not another | CAP Repair - If you have the Inside Wire Maintenance Plan or Guardian Plan for residential customers only, CAP will repair the wiring and/or jack for a fee. |
| | Typical Phone Set Problems • Stuck push buttons • Worn cords • Broken cord clips • Stuck receiver buttons • Cracked phone set | Place where you lease or bought your phone. (If you have Guardian Plan, CAP will arrange for use of a loaned phone set, up to 60 days, while your set is being repaired.) |

Consumer Note:

If your problem is in the phone set and you call for a CAP repair person to come out, you will be charged for the service call - and your phone will not be repaired. (No charge for residential customers with Guardian Plan.) The charge for residential customers is \$54. Charges for business customers are \$65 and \$91.

Credit for lost service

When you are unable to use your local service for 24 hours or more, you will be given an adjustment on your local service. The 24-hour period begins when you report the problem to CAP Telephone.

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

December 21, 1987

Mr. William Simms
CAP Telephone Company
305 West Chesapeake Avenue, Room 410
Towson, MD 21204

RE: Case No. C-88-1104
Seminary Avenue S/E, 300 ft.
West of York Road
9th Election District

Dear Mr. Simms:

I have consulted with Mr. James E. Dyer, Zoning Supervisor, as to whether the erection of an above ground distribution terminal is a use permitted as a matter of right or would need to go through the special exception process. Mr. Dyer has concluded that the appropriate manner in which to resolve this issue would be to go through the public hearing process. At that time, you could request an interpretation of the Baltimore County Zoning Regulations as to whether this use is similar to that in Case No. 83-234-XSPHA, in which an underground digital electronic communication terminal was determined to be a public utility use permitted as of right in all zones.

For your benefit, I have enclosed a copy of the decision in Case Nos. 83-140-XA and 83-234-XSPHA. Also enclosed is a copy of the present policy (A-24) that relates to controlled environmental vaults. We anticipate a response from CAP Telephone as to what avenue you will be pursuing in this matter. If further questions remain, please contact this office at 494-3351.

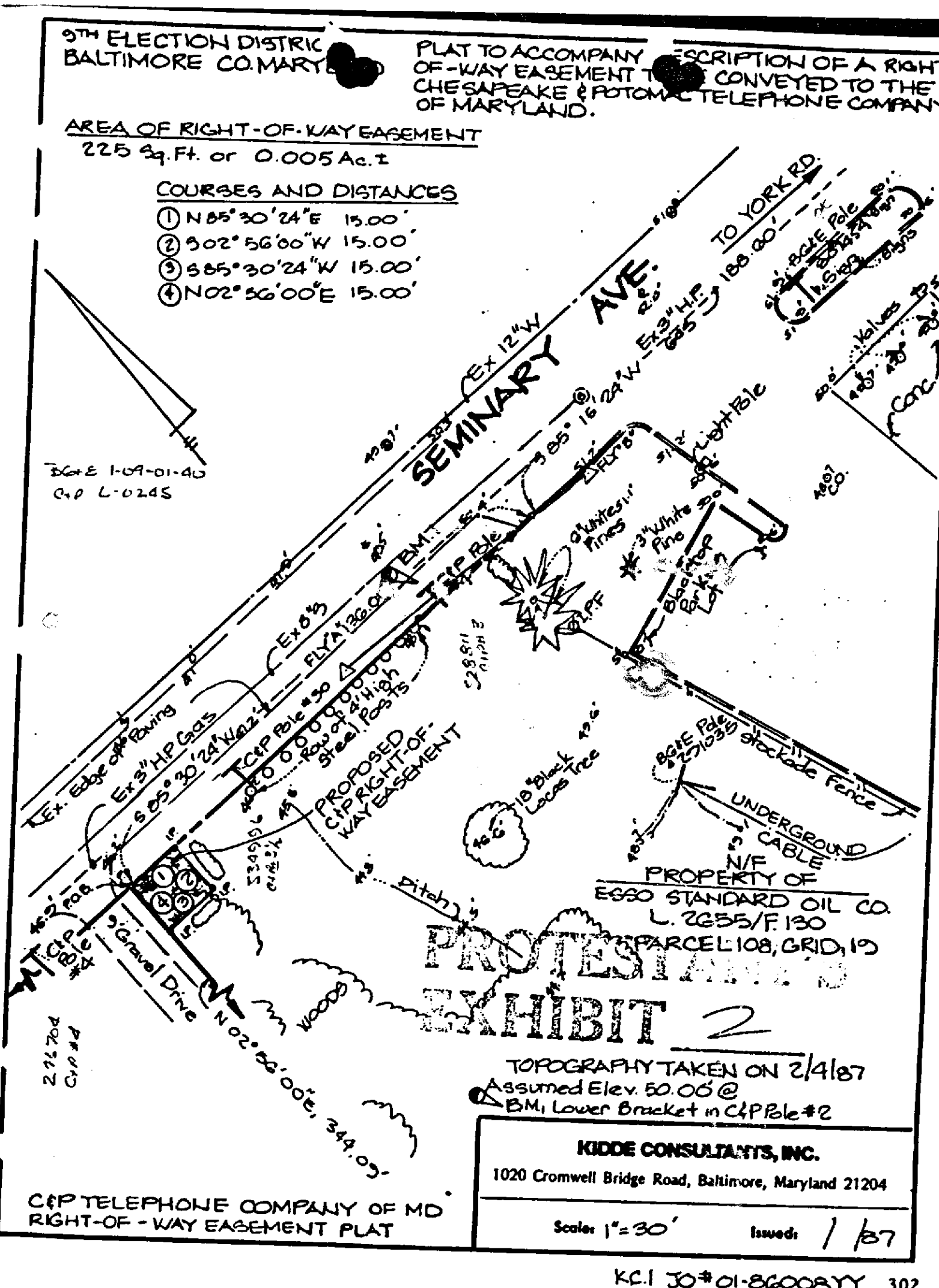
Sincerely,

James H. Thompson
JAMES H. THOMPSON
Zoning Coordinator

JHT:ech

bcc: Mr. Roland Rockel
16 W. Seminary Avenue
Towson, MD 21204

PETITIONER'S EXHIBIT 2



16 West Seminary Avenue
Lutherville, Maryland 21093
December 12, 1987

PETITIONER'S EXHIBIT 3

Re: Claim of Zoning violation, s/s Seminary Ave., 325'2" west of York Rd., 9th Elect. Dist.

James H. Thompson
Zoning Enforcement Section
Baltimore County Office of
Planning & Zoning
Towson, Maryland 21204

Dear Mr. Thompson:

First, please find a chronology of events, as I perceive them, relative to the subject matter:

1-On or about Aug. 11, 1987 a Zoning Technician advised me by phone that a Special Exception would be required to erect a public utility service center fixture located upon the property in a D.R. Zone.
2-On Nov. 28, 1987 when construction started, I visited with you and you concurred it appeared a Special Exception was required. However, as it was unique, you would seek further confirmation from senior staff.
3-On Nov. 30th when I visited you no definitive decision had been achieved in the matter. You went on to relate the C & P Telephone Project Engineer stated he would be discharged if he discussed details of the fixture to be erected. This I regarded as over above-calling by him. Accordingly, no compliance action had been taken in the matter.
4-We discussed the matter by phone on Dec. 14th and you advised me to be patient. You also suggested Zoning Office "policy" may prevail over Baltimore County Zoning Regulations to exempt the utility compliance.

As I read the regulations it appears a Special Exception is required to enable what has taken place. The service center fixture was installed on Dec. 14th. Obviously, the next step is to connect this service center into the system. After that event, should a Special Exception be required to comply with the regulations, their defense stance could be denial would be a hardship. Therefore, time is of the essence to not seem to condone non-compliance.

Of key importance in the matter is the fixture is upon the property of the Grantor as permitted in the recorded Easement Agreement. It is not above or under ground authorized by Zoning Regulations. It is a highly visible service center, not pleasing in appearance, with no planned screening towards our pre-dominant residential area and no front or side property line set backs.

Please advise by return mail if enforcement action will be taken. In the absence of such action, please advise the basis thereof. In the event it is proffered some policy would negate enforcement, please provide copy of the policy and the provision of the Zoning Regulations that allow the policy to prevail.

Thank you for your prompt attention in this regard.

Roland A. Rockel
Roland A. Rockel

PETITIONER'S EXHIBIT 4

16 West Seminary Avenue
Lutherville, Maryland 21093
February 18, 1988

John Thompson
Zoning Coordinator
Baltimore County Office
of Planning & Zoning
Towson, Maryland 21204

Re: Zoning violation
Case No C - 89 - 1104

Dear Mr. Thompson:

My last correspondence to you, dated Jan. 16, 1988, regarding the above captioned matter has not received the decorum of any reply. Obviously, I have no indication of what, if any, enforcement action or resolution has been achieved.

This to advise that on Wednesday, Feb. 17, 1988, the C & P Telephone Company installed cable into this "Public Utility Service Center" fixture. The cable does not yet appear to be connected to internal parts of the fixture.

The failure to take enforcement action or to require a hearing to determine if a "Special Exception" is to be granted, would appear tantamount to aiding and abetting this violation; in the opinion of some nearby effected residents.

Your attention is again directed to the fact installation of this "Service Center" on privately owned land, Zoned D R 5.5, is contrary to such use permitted as a right as defined in the B C Z R.

Please advise by return mail the status of the enforcement recorded Right of Way Easement from the Grantor to the Grantee defines the use that is not permitted as a right in the Baltimore County Zoning Regulations.

Very truly yours,

Roland A. Rockel

Mr. Roland A. Rockel
February 29, 1988
Page Two

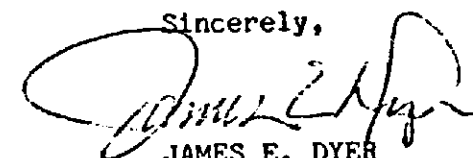
Any ruling that requires a public hearing before these minor utilities can be installed on private land would in my opinion be contrary to the spirit and intent of the BCZR and would have the tendency to reverse the present trend of placing the wires underground.

Notwithstanding the fact that the front doors of the box in question are embellished to resemble walnut wood this office does encourage the C&P Telephone Company to provide additional screening. It is also suggested that said screening be installed only after consultation with area residents whose property lies in close proximity to the box.

If you disagree with the above position you may request a public hearing, via Section 500.7 (enclosed) at which time the Zoning Commissioner or as the case may be the Deputy Zoning Commissioner review all testimony presented and issue an order.

If you have any questions concerning the above, please do not hesitate to contact me.

Sincerely,


JAMES E. DYER
Zoning Supervisor

JED:kbb

cc: James H. Thompson, Zoning Enforcement
Mr. R.E. Baker, C&P Telephone
People's Counsel

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

PROTESTANT'S EXHIBIT 1

Mr. Roland A. Rockel
16 West Seminary Avenue
Lutherville, Maryland 21093

RE: Alleged Zoning Violation, i.e., Above Ground
Distribution Terminal for Local Telephone
Service, 58" X 51" X 17" at
Southside Seminary Avenue, West of York Road
9th Election District

Dear Mr. Rockel:

Your correspondence relative to the above referenced matter has been referred to me for review and reply. Please except my apologies for not providing you with a speedier reply. We have given considerable thought to your complaint and I have personally visited the site in question prior to preparing this reply. My original suggestion to the telephone company that they petition the Zoning Commissioner for a public hearing resulted in their taking a position that previous hearings and decisions regarding similar equipment have already resolved the issue and after reviewing all the facts, I must agree. Notwithstanding these previous hearings and decisions, i.e., Case Nos. 83-243-XSPHA and 83-140-XA and CBA86126, I am, per your request, providing additional information relative to the Zoning Regulations and the use in question.

Since your complaint deals with a minor public utility structure it should be noted that Section 306 of the Baltimore County Zoning Regulations (BCZR) provides that:

"Minimum lot area regulations in any zone shall not apply to repeater, booster, or transformer stations, or small community dial offices."

Your attention is also called to the uses permitted as a matter of right in residential zones in general and specifically the D.R.5.5 zone. Section 1B01.1 - General Use Regulations in all D.R. zones, specifically Section 1B01.1.A.4 - "Above ground electrical-power, telephone, or telegraph lines, except above-ground electrical power lines having a capacity of 35 kilovolts or more; pole-mounted transformers or transformer banks", and 1B01.1.4.5 - "Other cables, conduits, gas, water, or sewer mains; or storm-drain systems: all underground".

It is my opinion that the 4' high, 5' wide, 17" deep box in question that houses a terminal for above ground wires falls within the parameter of the above use and area regulations and is permitted as of right. In arriving at this opinion consideration has been given to the fact that said regulations permit above-ground gas and electric poles/telephone poles and accompanying wires and cables and that it is the present practice to place wires and cables underground and replace the poles with above ground boxes of the type that generated your complaint.

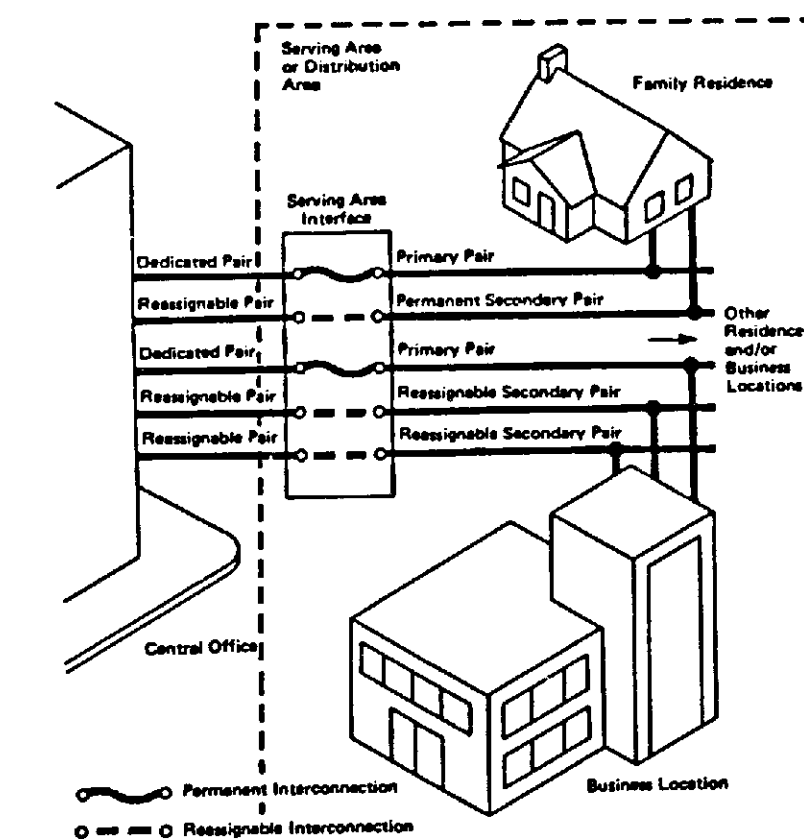


Dennis F. Rasmussen
County Executive

Serving Area Concept

Serving Area Concept (SAC)

A technique, introduced in the early 1970s, of administering *outside plant*. It is also referred to as interface design because it features interface units (also called *serving area interfaces*) between the distribution plant and feeder plant. The Serving Area Concept (SAC) requires that a *wire center* be divided into serving areas of 200 to 600 *housing units*, each served from a serving area interface. The area served from the interface becomes the *distribution area*. In SAC, each living unit is usually assigned at least two pairs of wire in the distribution plant, and the feeder plant provides an average of one and one-half pairs per living unit back to the wire center. SAC reduces plant-operating costs and improves utilization of feeder pairs.



Serving Area Concept

PROTESTANT'S EXHIBIT 3